

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HOME AIDE SERVICE OF EASTERN
NEW YORK, INC., *d/b/a Eddy Visiting
Nurse Association,*

Plaintiff,

-against-

1:04-CV-0310
(LEK/DRH)

MICHAEL O. LEAVITT, *Secretary of
Health and Human Services,*

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on January 6, 2006, by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 14). After more than ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Defendant Secretary, which were filed on February 21, 2006. Objections (Dkt. No. 18).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that Plaintiff's Letter Motion (Dkt. No. 19) requesting a decision concerning this Court's review of Judge Homer's Report-Recommendation, and Defendant's objections thereto, is **GRANTED**; and it is further

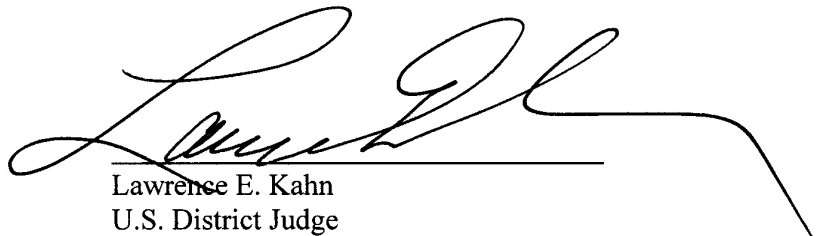
ORDERED, that the Report-Recommendation (Dkt. No. 14) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Plaintiff's Motion (Dkt. No. 6) is **GRANTED**, Defendant's Motion (Dkt. No. 9) is **DENIED**, the determination of the Medicare Appeals Council is **REVERSED**, and this matter is **REMANDED** for further proceedings consistent with this Order and Judge Homer's Report-Recommendation; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: December 07, 2006
Albany, New York



Lawrence E. Kahn
U.S. District Judge